

Ashraf (Migration) [2024] AATA 749 (4 January 2024)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Haroon Ashraf
REPRESENTATIVE:	Ms Simplepreet Kaur (MARN: 1805025)
CASE NUMBER:	2302955
HOME AFFAIRS REFERENCE(S):	BCC2022/649281
MEMBER:	Warren Stooke AM
DATE:	4 January 2024
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Student (Temporary) (Class TU) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 500 (Student) visa: • Public Interest Criterion 4020 for the purposes of cl 500.317 of Schedule 2 to the Regulations

Statement made on 04 January 2024 at 8:22am

CATCHWORDS

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – application made within 3 years of previous visa refusal – genuine access to funds – funds in non-banking finance company withdrawn by father without applicant’s knowledge – not currently enrolled in registered course – compassionate or compelling reasons to waive criterion – not secondary visa holder on wife’s visa – care for wife and young child’s physical condition – wife’s critical health care work – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5(1), 65, 375A

Migration Regulations 1994 (Cth), r 1.03, Schedule 2, cl 500.317, Schedule 4, criterion 4020(1), (2), (4), (5)

CASES

Arora v MIBP [2016] FCAFC 35

Batra v MIAC [2013] FCA 274

Kaur v MIBP [2017] FCAFC 184
Plaintiff M64/2015 v MIBP [2015] HCA 50
Trivedi v MIBP [2014] FCAFC 42

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

3. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 16 February 2023 to refuse to grant the applicant a Student (Temporary) (Class TU) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
4. The applicant applied for the visa on 15 March 2022. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 500.317 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because the Departmental records indicated that in the three years before making this application for a Student (TU 500) visa and ending when a decision on this application is made, the applicant was previously refused a Student visa on 16/08/2021 on the grounds of providing a bogus document or false or misleading information in relation to the application for that visa. This means the applicant fails to satisfy PIC 4020(2), with the result that this visa application is liable for refusal.
5. The applicant appeared before the Tribunal on 21 November 2023 to give evidence and present arguments.
6. The applicant was represented in relation to the review.
7. The applicant confirmed to the Tribunal that he had received a copy of the delegate's decision and had read the decision.
8. The applicant stated that his Representative had provided a copy of the decision to the Tribunal with the application for review.
9. The applicant stated that he understood his visa application was refused by the Department because he had not met PIC4020 and previously had been refused a visa.
10. The Tribunal informed the applicant on 30 October 2023 of the placement of a s375A Certificate by the Department on the applicant's file relating to the provision of a 'bogus document or false or misleading information' regarding claimed access to funds by applicant through a non-banking institution, ICIBL.
11. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

12. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 500.317 for the grant of the visa. Broadly speaking, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years

before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and

- the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
- neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).

13. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

14. On 30 October 2023 the Tribunal informed the applicant of the placement of a s375A Certificate on the applicant's file by the Department and a request for comment as follows:

"I am writing in relation to the application for review made by you in respect of a decision to refuse to grant a Student (Temporary) (Class TU) visa.

Following your postponement request for the hearing scheduled for 20 October 2023, (and postponed at your request), the Tribunal informs you that pursuant to s 375A, a Departmental Certificate has been placed on your file. The Tribunal is obligated to inform you of the placement of the s 375A Certificate on your file under s 65 of the *Migration Act 1958* (Cth) (the Act).

In this regard, the Tribunal has attached a full copy of the s 375A Certificate and invites you to comment on, or respond, to certain information, which we consider would, subject to your comments or response, be the reason, or a part of the reason, for affirming the decision under review.

In essence, the Tribunal discloses that the s 375A Certificate relates to allegations that the applicant has:

- provided a bogus document or false or misleading information in relation to An application for that visa, or
- provided a bogus document or false or misleading information in relation to a visa that the applicant or the applicant's family member held in the 12 months before making that visa application.

Departmental records indicate that in the three years before making this application for

a Student (TU 500) visa, the applicant was previously refused a Student visa on 16 August 2021 on the grounds of providing a bogus document or false or misleading information in relation to the application for that visa.

In particular, the application of 15 March 2022 stated that a bank deposit of \$51,900

(AUD) was held in a bank, and in response to a departmental s 57 Natural Justice Notice, the documents provided by the applicant to the department from the financial institution i.e., ICIBL, was discovered to be a financial institution that was licenced to carry out investment finance services as a non-banking finance company.

Further, it is alleged that the ICIBL authentication letter states that ICIBL is a public limited company and

"The Company is engaged in the business of leasing and investment finance activities as a Non-Banking Finance Company..." As such, a non-banking finance company cannot accept deposits into savings and demand deposit accounts, which is one of the core businesses for banking financial institutions. Furthermore, a Non-Banking Finance Company is not governed by the central bank (or its equivalent) of the country in which it operates. Therefore, substantiating the Departmental Officer's findings that ICIBL does not operate as a genuine bank for financial purposes".

As such, the Department alleged that the findings were that ICIBL was not operating as a genuine bank for the required financial purposes.

This information is relevant to the review because an applicant for this visa must, among other items, satisfy the requirements of clause 500.317, which includes Public Interest Criteria (PIC) 4020(2).

If we rely on this information in making our decision, it may form part or all of the reason for affirming the delegate's decision.

Please provide this information, in writing, by 17 November 2023. If the information is in a language other than English, it must be accompanied by an English translation from an accredited translator.

If you are unable to provide the requested information by 17 November 2023, you should contact us before this date.

If you have any questions, please email mrdivision@aat.gov.au, or contact me on the number listed below, or telephone our national enquiry line on 1800 228 333. For language assistance, please contact the Translating and Interpreting Service (TIS) on 131 450."

15. The applicant was granted a Bridging Visa A on 18 March 2022 with condition 8105 'work limitation' that became active when the applicant's Bridging Visa A ended on 5 April 2022.
16. The applicant stated at hearing that he was granted a Bridging Visa B on 24 April 2022 that has condition 8105 – 'work limitation' and allows study and travel.
17. The applicant stated that he had returned to Pakistan.
18. The applicant provided evidence of health insurance from 3 February 2020 to 5 July 2023.

19. The applicant provided evidence of marriage to Rabbia Rafique on 15 December 2020 in Queensland that was registered on 23 December 2020.
20. The Tribunal asked the applicant if he was currently enrolled in a course of study and he responded: "No".
21. The applicant stated that the last time he studied was in 2021 when he undertook a Master of Business Administration at Holmes College and completed his studies in May 2023.
22. The applicant stated that he stayed to support his wife who is now on a Graduate 485 Temporary visa, where he is not a partner on this visa.
23. The applicant stated that his wife was not originally on his visa when he received the advice regarding PIC4020.
24. The applicant stated that he currently has funds in Australia with the CBA Bank, which is used to support his wife.
25. The applicant stated that he is currently living in Victoria and working as a ride-share driver
26. The Tribunal asked the applicant if it was correct that his application was supported by advice to the Department that he had funds with ICIBL in Pakistan and the applicant responded: "Yes Member".
27. The applicant stated that the allegations have had an impact on his whole life and that it was an honest mistake. He stated that he was not in Pakistan when his father became the sponsor and he gave the applicant a bank statement [from ICIBL].
28. The applicant stated: "*I had a genuine access to funds, it was my personal account*". He stated he was not acting on this account and it was closed, as his father withdrew the money, and he did not know that the funds were not there.
29. The applicant stated: "*I do not want to stay permanently in Australia*".
30. The applicant provided the Department with a GTE statement dated 28 February 2022 that detailed the study background for he and his wife in the Higher Education sector, the premature birth of their child and the emotional stress accompanying their personal situation. This included a confidential psychological report from Mr Bill Singh, Consultant Psychologist.
31. The Representative furnished to the Department on 8 March 2022 a submission that addressed the domestic and financial circumstances pertaining to the applicant.
32. On 8 November 2023 the Representative for the applicant provided the Tribunal with a response to the Tribunal's correspondence of 30 October 2023, with the following submission:

"Subject: Explanation in response to AAT request received on 30 Oct 2023"

Dear Tribunal member,

This submission is in regard to the above applicant's review application submitted to AAT and in support of Mr. Ashraf's request that he believes that he did satisfy the requirements of clause 500.317, which includes Public Interest Criteria (PIC) 4020 when he applied for his first student visa extension and that he has received an unfair refusal for his recent student subsequent entrant visa from the Department.

Background

Mr. Ashraf Haroon was granted a Subclass 500 student visa on 15th Nov 2019. He has complied with his student visa conditions while he was a holder of that visa. He got married to Rabbia Rafique on 15th Dec 2020 in Queensland, Australia and applied for a student subsequent entrant visa on 30th March 2021. He has received a refusal on 16th Aug 2021 due to PIC 4020(1).

He applied for another student subsequent entrant visa on 20 Sep 2021, his visa was refused again based on PIC 4020(1) restricting him to make a visa application as per PIC4020(2).

The applicant applied for another student subsequent entrant visa on 15 March 2022. He had compelling and compassionate reasons to seek a waiver for PIC 4020 when he applied for this visa. With reference to the above, it is kindly stated that the applicant who was not deemed meeting PIC 4020(1) of PIC 4020 in his previous subsequent entrant student visa application, requested for a waiver of PIC 4020 as well on the following grounds.

Explanation Student visa resulting in a refusal due to PIC 4020

The applicant is of the view that he has not provided any bogus document, rather than the financial documents attached in the previous application were original and could be verified by the department from the relevant financial institution. It is to be noted that recently many Pakistani applicants have gone through the same circumstances due to the unfavourable findings of the department about the concerned financial institution i.e., Invest Capital Investment Bank Limited (ICIBL). Whereas the Department of Home Affairs has been accepting the same financial institution as an acceptable source of financial institution in the past. There are proven records that several applicant's student visas were previously granted by the Department who has provided financial documents by ICIBL bank.

For the prevalence of the Natural Justice and procedural fairness, had the department found any unfavourable information about the concerned institution, there should have been a direct advice to the clients about relevant findings and should have been given an opportunity to provide a new source of financial capacity within a stipulated period of time. Had the department followed the same procedure in this instance, the applicant would have provided some other source of fund's document. It is worth noticing that majority of the applicants and their sponsors from Pakistan maintain multiple bank accounts in more than one financial institution and if it was needed, the same documents could have been provided by the applicant from other banks as well.

In his previous subsequent entrant student visa application, the applicant was able to provide financial capacity documents from Australia but due to lack of knowledge, he relied on Pakistani bank statement because it was very handy to provide. His current bank balance documents from Australian Commonwealth Bank were provided with his second student subsequent entrant application to prove meeting his financial capacity requirement due to the fear that the Department will refuse his application due to the above annotation.

Moreover, in response to the departmental s57 Natural Justice Notice, the documents provided by the applicant to the department from the financial institution i.e., ICIBL, the case officer gave the following remarks as mentioned in the DoHA refusal decision.

"I note the ICIBL Licence provided states that ICIBL is licenced to carry out investment finance services as a non-banking finance company. The ICIBL authentication letter also states that ICIBL is a public limited company and "The Company is engaged in the business of leasing and investment finance activities as a Non-Banking Finance Company..." As such, a non-banking finance company cannot accept deposits into savings and demand deposit accounts, which is one of the core businesses for banking financial institutions. Furthermore, a Non-Banking Finance Company is not governed by the central bank (or its equivalent) of the country in which it operates. Therefore, substantiating the Departmental Officer's findings that ICIBL does not operate as a genuine bank for financial purposes"

The observations of the case officer as mentioned above for the provided information by the ICIBL did not show that it was a fake or bogus information rather she explained the technical findings to prove that ICIBL was not operating as a genuine bank for the required financial purposes.

It is submitted that for the procedural fairness, it would have been fairer for the applicant to get a second opportunity to provide the required financial capacity documents rather than being classified as a bogus document and making him subject to PIC 4020(1). It is kindly requested that due weightage should be given to the genuineness of the documents submitted and if more clarification was needed, then the due opportunity should have been provided to the applicant to explain himself further as he firmly believes that he meets PIC 4020(1) and will continue to meet it as he could not afford to get bogus document accusation on him.

The above explanation was provided to instate the fact that the initial PIC 4020 was an unfair decision taken by the Department and that has caused the refusal of applicant's subsequent entrant visa applied proceeding to it. The applicant is bearing the consequences of the unjust decision of the Department.

Compelling and Compassionate reasons

Refusal under review with AAT.....

The applicant has applied again being the subsequent entrant as the applicant was not left with any option but to apply again in order to lawfully stay in Australia to support her wife and daughter. He has requested for a waiver of PIC 4020 stating the below compelling and compassionate reasons.

The applicant's circumstances have significantly changed since his first visa refusal, the applicant's partner was pregnant and had to undergo amniocentesis after grave concerns from her GP that the child has [Symptom]. The procedure confirmed that the child had [Condition]. This unfortunate news was gut wrenching for any parent whose newborn was affected by such genetic disorder. The significant features in a child affected by [Condition] can include [Features].

The pregnancy was not easy either for the applicant's partner, seeing which he needed to apply for another subsequent entrant visa so that he can aid her during this difficult time. Even after intense care and precautions the child was born premature on [Date]. The child (Ms. Rehmat Fatima Haroon) was underweighting and doctors feared for more complications. She was transferred to Northern Hospital for better care and constant monitoring. She is even now in hospital and being fed via naso-gastric tube. She is still suffering from ongoing low weight, demanding constant medical care. Please find attached hospital letter and GP letter with test result reports.

The child is dependent on her parents, Haroon and Rabbia, is also finding it challenging to balance work, and home. The child requires 24*7 attention because of her condition. Despite a challenging pregnancy, Rabbia has always complied with the requirements of her student visa and made progress towards her education due to her support from her partner.

Rabbia and her daughter do not have anyone in Australia from whom they can seek any support. Ashraf is their only support. [Information redacted]. Henceforth, she believes she is equally dependent on her partner and needs him until she stays in Australia.

The applicants have genuine intentions to leave Australia. They are certain about their future plans in Pakistan after their return. PIC 4020 is a grave allegation for any genuine applicant who just desired to make his career and support her family. The assertion has not only impacted their life but is also mimicking their career opportunities. Rabbia is a social worker and has extended her services for social causes and now she is lacking the support herself. The Department failed to acknowledge the compelling reason they had to apply for a waiver instigating immense distress.

Henceforth, I humbly request the Department to consider all the above circumstances to remit the decision of Immigration for student subsequent visa.

Please do not hesitate to contact if the Department needs any further information.

I look forward for your favourable outcome of this submission."

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

33. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no

requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.

34. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
35. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.
36. On the basis of the evidence provided by the applicant at hearing, including the applicant's admission that his father obtained a loan from ICIBL, which the Tribunal finds is not a bank and is more appropriately defined as a loan facility, the Tribunal is satisfied that the applicant at the time of application did not have a 'genuine access to funds' as required by the regulations.
37. Further, the applicant provided evidence that his father withdrew monies from the account used to support the application and closed the account, which the applicant claimed he was not aware of this action.
38. The Tribunal is satisfied that that the applicant submitted a 'bogus document or false or misleading information', as defined in s 5(1).
39. Further, the Tribunal is satisfied on the basis of the evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth a 'bogus document or false or misleading information', as defined in s 5(1). As such, the Tribunal is satisfied that 'information that is false or misleading in a material particular' as defined in PIC 4020(5) has been given to the Department, i.e. information that is false or misleading at the time it is given, and relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.
40. The Tribunal also notes that the applicant is solely responsible for the documentation and claim that was submitted with his application for the Student visa.
41. Therefore, the applicant does not meet PIC 4020(1).

Should the requirements of PIC 4020(1) or (2) be waived?

42. The requirements of PIC 4020(1) and (2) may be waived where there are compelling circumstances that affect the interests of Australia, or where there are compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen (as defined in reg 1.03), that justify the granting of the visa. The decision-maker must first be satisfied that there are such circumstances, then must consider whether to exercise the discretion to waive the requirements, having regard to those circumstances: *Kaur v MIBP* [2017] FCAFC 184.
43. The expressions 'compelling circumstances' and 'compassionate or compelling circumstances' are not defined for these purposes. To be compelling, the circumstances must force or drive the decision-maker irresistibly to be satisfied: see *Plaintiff M64/2015 v*

MIBP [2015] HCA 50. The ordinary meaning of ‘compassionate’ relates to feelings of sympathy, sorrow, pity or concern for others.

44. The Tribunal advised the applicant of the requirements pertaining to the Tribunal’s exercise of discretion in relation to a waiver.
45. At the hearing of 21 November 2023, the Tribunal invited the applicant to provide written submissions, post hearing, that would address the matter of the Tribunal exercising its discretion in relation to a waiver.
46. On 22 November 2023, the Representative for the applicant provided the Tribunal with the following submission in support of the Tribunal exercising discretion in relation to a waiver:
“I Simplepreet Kaur (MARN: 1805025) am writing this email in regard to the above applicant's waiver. I would like to thank AAT for providing the applicant with an opportunity to share the explanation for PIC 4020 waiver.

Please find below the reasons for the waiver.

I would like to inform you that my client’s partner Rabbia Rafique ([DOB]) is currently employed as a Disability Support Worker at Healthcare Australia. By helping and supporting people with impairments, disability support workers make a significant contribution to society. Their varied and significant contributions touch on many facets of social, cultural, and individual well-being. The goal of disability support workers is to raise the general standard of living for people with impairments. Disability support workers help people with everyday tasks, self-care, and social interactions so they can live happy, purposeful lives. They also provide disabled people the tools they need to become more self-sufficient. By providing individualized support, they help people develop the abilities and self-assurance necessary to take an active role in their communities. Being a support worker often assists with healthcare needs, including medication management, physiotherapy exercises and coordinating medical appointments. The above clearly emphasizes Rabbia’s roles and responsibilities as a DSW.

The client is currently living at xxxxxxxx, Greenvale, VIC 3059 with his wife and daughter (Rehmat Fatima Haroon -[DOB]). My client has a moral responsibility toward his family. Rabbia's profession as a disability support worker requires her time and focus. The applicant is the sole relative in Australia that she can completely rely on. All that Rabbia and their daughter have to rely on is him.

The applicant plays a crucial role in providing emotional support. Also, he provides additional support in assisting with daily tasks which also include taking care of their daughter and household chores. The applicant also plans and participates in family activities that contribute to a positive family dynamic, considering the interests and abilities of all family members. The applicant also monitors her medical checkup and always takes her for medical appointments. During her pregnancy, Rabbia had to undergo a procedure called amniocentesis which confirmed that her baby had [Condition]. [Information redacted]. The applicant is solely responsible for taking care of their daughter. As per the Pediatrician’s advice her daughter needs constant monitoring and care. While Rabbia makes a difference in the life of an Australian citizen or permanent resident through role and employment, Haroon provides that never ending support to her which keeps her serving the special people, supporting the aging population, and growing children. With immense shortages of community and social worker with each day Rabbia makes a change in someone else’s life. The above clearly explains the position and need for applicant to support his wife and family. The applicant’s family is fully dependent on him for emotional and physical support. Haroon needs to support Rabbia until she works here on her current visa.

In support of the above I have enclosed Rabbia's employment evidence, Statutory declaration and Rehmat Fatima Haroon's GP letter for your reference.

47. I humbly request the AAT to provide the waiver to the applicant and remit the decision so that he can be an asset to his family and fulfill his responsibilities."

48. Further, the Tribunal has considered the Statutory Declaration of Rehmat Fatima Haroon, together with health reports pertaining to the applicant's child and the employment status of the applicant's wife and is satisfied that there are compelling circumstances that affect the interests of Australia, and that there are compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen (as defined in reg 1.03), that justify the granting of the visa. In this regard, the spouse of the applicant is working as a Disability Support Worker at Healthcare Australia in a critical area that impacts the quality of life of Australian citizens and permanent residents. As such, the Tribunal accepts that the applicant's spouse, Rehmat Fatima Haroon, works in an area of critical health care.
49. For these reasons, the Tribunal is satisfied that the requirements should be waived.
50. Therefore the requirements of PIC 4020(1) should be waived.
51. The Tribunal notes that the applicant is not currently the holder of a Confirmation of Enrolment, which will need to be satisfied, together with other relevant criteria pertaining to the grant of Student (Temporary) (Class TU) visa
52. On the basis of the above, the applicant does satisfy PIC 4020 for the purposes of cl 500.317.

DECISION

53. The Tribunal remits the application for a Student (Temporary) (Class TU) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 500 (Student) visa:
- Public Interest Criterion 4020 for the purposes of cl 500.317 of Schedule 2 to the Regulations

Warren Stooke AM
Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is ***false or misleading in a material particular*** means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...